IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.440 OF 2004

Shri Dadaji Vithal Wagh .. Appellant

Versus

Shri Khandu Shankar Wagh .. Respondent

Mr.P.S.Dani for appellant

Mr.G.S.Godbole for respondent

CORAM : P.V.KAKADE, J.

DATE : 16TH JUNE, 2005.

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order dated 18th November, 2003 passed by Addl. District Judge, Nasik allowing the appeal and decreeing the suit of the plaintiff partly, setting aside the order passed by Civil Judge, Junior Division, Kalwan dismissing the suit.

2. The plaintiff filed the suit in the lower court for possession of the land of 6R from his field Gat No.280 of village Bagadu over which the defendant had allegedly made encroachment. It was further alleged that in the year 1991 the defendant started to encroach over the suit land and plaintiff got the land measured through D.I.L.R. On measurement it was found that the defendant was in possession of the land of 6R belonging to the plaintiff. Hence the suit came to be filed for removal of encroachment and possession of the encroached portion of the suit land. The defendant resisted the suit on various grounds and contended that the land in question that he had encroached belong to him. According to him, the survey made by D.I.L.R. was defective and therefore, the evidence in that regard could not be relied upon. He also claimed adverse possession in the property.

. The learned trial judge on the basis of available evidence proceeded to adjudicate the dispute and came to the conclusion that the plaintiff had failed to prove alleged encroachment in his land to the extent of 6R. He also held that the defendant had established

his adverse title on the suit property and on such other grounds dismissed the suit of the plaintiff. The appeal was preferred to the District Court, Nasik against the said judgment and order. The Addl. District Judge adjudicated the appeal on merits and after hearing both the parties came to the conclusion that the trial court had erred in appreciating the factual aspects of the evidence and reversed the order passed by it and allowed the appeal and thereby suit came to be decreed. Hence the present appeal.

3. At the outset it may be noted that so far as question of adverse possession is concerned it is purely question of fact and therefore, by no stretch of imagination it could be said that any substantial question of law is involved in that regard. Moreover, on the factual aspect there is absolutely no evidence on record to show that adverse title of the defendant is perfected on the suit property and therefore, it is found that the learned lower appellate court judge has rightly held that the defendant has failed to establish his adverse title. The defendant has disputed the validity of the evidence regarding encroachment, which is sought to be established on the basis of measurement

made by D.I.L.R. At the outset it may be noted that the entire evidence in that regard is in respect of issues of facts involved in this case and no substantial question of law is involved therein. The learned counsel for the appellant sought to bring to my notice the evidence revolving around this issue and submitted that the evidence of two Surveyors, who were responsible particularly to measure the property and drawing the map showing the encroachment was not reliable and therefore, could not be available for the plaintiff to allege encroachment to the extent of 6R. However, perusal of the evidence of both the Surveyors from the office of the D.I.L.R., it is seen that they have adhered to the basic procedure in measuring the suit property and drawing the map showing that the plaintiff's property was encroached upon by the defendant to the extent of 6R. Moreover, it cannot be overlooked that it has also come in the evidence that the defendant had also got the land measured, however, he did not bring the relevant documentary evidence on record and therefore, the learned lower appellate court judge came to the conclusion that it amounts to suppression of evidence. Be as it may, the fact remains that by virtue of Section 83 of the Evidence Act the presumption has to be raised

in favour of the available evidence on record in respect of the maps drawn by the D.I.L.R., which shows the extent of encroachment over the land.

4. Time and again it is held by the Apex Court that it is not within the the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. Perusal of the entire evidence on record and appreciation made thereof by the learned lower appellate court judge, it is seen that it is made properly and therefore, it would brook no interference.

5. In the result the appeal stands dismissed with no order as to costs.

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